17CV1594

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**

| | |
|---|---|
| United States District Court | District SDNY |
| Name (under which you were convicted): Eric Ian Hornak Spoutz | Docket or Case No.: 16CR00392-001 |
| Place of Confinement: 18563 Campo Dr., Clinton Twp MI 48038 | Prisoner No.: |
| UNITED STATES OF AMERICA | Movant (include name under which you were convicted) v. Hornak, Spoutz Eric Ian |

## MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
   Hon. Lewis A. Kaplan
   SDNY
   500 Pearl St., Room 2240, NY, NY 10007
   (b) Criminal docket or case number (if you know):
2. (a) Date of the judgment of conviction (if you know):
   (b) Date of sentencing: 2-16-17
3. Length of sentence: 41 Months
4. Nature of crime (all counts):
   1 Count, Wire Fraud
5. (a) What was your plea? (Check one)
   (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court:

(b) Docket or case number (if you know):

(c) Result:

(d) Date of result (if you know): Format m/d/yyyy

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know): Format m/d/yyyy

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or applicatio[Format m/d/yyyy]rmation:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know): Format m/d/yyyy

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having juri[Format m/d/yyyy]tion taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See 'Ground One' Attachment and associated Exhibits

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, Format m/d/yyyy

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, Format m/d/yyyy

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See 'Ground Two' and associated Exhibits in Attachments

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, i Format m/d/yyyy

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, i Format m/d/yyyy

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Format m/d/yyyy

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, i Format m/d/yyyy

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or orde[ Format m/d/yyyy ]

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, i[ Format m/d/yyyy ]

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Ground One and Ground Two: As a result of ineffective assistance of counsel I lacked the proper understanding of the law to know that I could raise these issues.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Robert E. Goldman, Esq. P.O. Box 239, Fountainville, PA. 18923

(b) At arraignment and plea:

Robert E. Goldman; Jean D. Barrett, 47 Park St., Montclair, NJ 07042

(c) At trial:

(d) At sentencing:

Jean D. Barrett

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

(1) the date on which the judgment of conviction became final;
(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

______________________________

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on (month, date, year).

Format m/d/yyyy 2-29-17

Executed (signed) on 2-29-17 (date).

Format m/d/yyyy

______________________________

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Print Save As... Export as FDF Print Reset

# Ground

# One

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GROUND ONE

On November 24, 2014 I retained Robert E. Goldman, a former Assistant United States Attorney and Special Trial Attorney for the United States Department of Justice in collaboration with the FBI Art Crime Team, as my counsel. My decision to do so was prompted by a meeting with the FBI that I had earlier in the month where I failed to disclose the truth regarding a recently initiated federal investigation into my business dealings. As an act of contrition, I asked my counsel to contact the FBI and the AUSA regarding my case to discuss my cooperating with the government. Initial contact with SA Christopher McKeogh was made by my attorney on November 28, 2014 (see Exhibit A). Throughout December 2014, my attorney was in contact with AUSA, Andrew C. Adams who had been assigned to my case, in order to schedule a physical meeting in New York (see Exhibit B). At some point during December 2014, the AUSA scheduled a meeting for the beginning of February 2015 with my attorney. On December 13, 2014 I sent an email to my attorney detailing my desire to engage in "proactive" cooperation with the government (see Exhibit C) to expose ongoing art world frauds that I had knowledge of, even advising my attorney that I would be willing to place myself in "harms way" to do so (see Exhibit C). On January 7, 2015, in an anticipation of my counsel's forthcoming meeting with the AUSA, I sent another email to my attorney expanding on the concept of my willingness to cooperate with the government, this time describing how I could employ my legitimate credentials and reputation in the art world to go undercover for the government to expose art world frauds (see Exhibit D). Additionally on February 1, 2015, I sent emails to my counsel in anticipation of his forthcoming meeting with the AUSA continuing to expand upon my knowledge of art world frauds as offerings of cooperation with the government (see Exhibits E & F). Finally, on February 4, 2015, I sent an email to my attorney regarding a subject who I later found out was a highly desired target by the FBI Art Crime Team and the AUSA, expressing my desire to help the government infiltrate the subject's fraud ring (see Exhibit G, H & I).

When my attorney met with the AUSA in February 2015 and expressed my willingness to cooperate, the AUSA expressed interest in my doing so which would have initiated the plea bargaining process, however, the AUSA said that he would require me to come in to engage in a proffer where I would discuss my own crimes prior to engaging in proactive cooperation with others. It was at that time that my attorney advised me that he made a series of demands of the AUSA including having the government release to my attorney evidence that they had against me (see Exhibit J) as well as written assurance from the AUSA that leniency wound be given to me in my own case in exchange for my cooperating with the government. When the AUSA refused my attorney's requests, my attorney became infuriated and advised me against communicating or cooperating with the government (see Exhibit J) unless they would fulfill his demands and that their unwillingness to do so was highly unorthodox. Despite my repeated phone calls to my attorney over the following months questioning his advice to me regarding not communicating or cooperating with the government, he persisted in advising me that such behavior was the only reasonable option under the circumstances because the AUSA was asking me to "fall on the sword" without meeting my attorney's demands of him. My attorney repetitively stated that his own experience as AUSA afforded him inside information regarding standard protocol with the Justice Department and that he would not tolerate the arrogance of such a young AUSA as Andrew C. Adams defying my attorney's requests.

My retained relationship with Robert C. Goldman continued into 2016, following my public arrest on February 3, 2016 for the crimes from which the investigation that I had retained Mr. Goldman to handle, stemmed. By February 16, Mr. Goldman was still advising me against any

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cooperation with the government whatsoever, despite the FBI having expressed an urgent desire for me to be an informant for them on the day of my arrest and the AUSA having now provided Mr. Goldman with a specific list of subjects that he was requesting my proactive cooperation regarding (see Exhibit K), specifically, one of the subjects that I had offered to Mr. Goldman over a year prior for communication to and cooperation with the government (see Exhibit G, H & I). Additionally on February 16, Mr. Goldman emailed to me a proffer agreement sent to him by the AUSA and Mr. Goldman in his email to me underlined all of the aspects of the agreement that Mr. Goldman deemed to be concerning and therefore prohibitive, in his opinion, to my cooperation with the government (see Exhibit L). It was at this time that I became very suspicious of Mr. Goldman's level of expertise and his ability to handle my case effectively. The final event of Mr. Goldman's representation of me occurred on March 7, 2016 when the AUSA emailed a plea bargain and forfeiture agreement to Mr. Goldman, which Mr. Goldman in turn emailed to me. The guidelines were 33-41 months in federal prison and the forfeiture agreement was for $1,450,000 and the scope of the case ranged from 2006-2015. Initially in February 2015, the AUSA had discussed a forfeiture and restitution of $200,000 - $400,000 (see Exhibit K) and having my case span from 2010-2015 if I would cooperate with the government, which remained consistent in the AUSA's statements to my attorney through February 16, 2016.

As a result of Mr. Goldman's professional legal advice to me not to cooperate with the government, which spanned in excess of a one year period of time, I experienced an undue prejudice in my case. Had I disregarded Mr. Goldman's counsel and cooperated in February 2015 upon the request of the AUSA and based upon my own inclination to do so, the proffer and therefore plea bargaining process would have begun much sooner than it ultimately did, my guidelines would have been significantly lower as a result of the government's willingness to view a reduced scope of my case and there would have been the realistic chance that my cooperation with the government would have been fruitful rather than having had the result that it did when I finally cooperated under my newly appointed attorney in April 2016, which the FBI told me was ultimately too late to be effective.

Robert E. Goldman's ineffective assistance of counsel hindered the Federal Government's ability to solicit my cooperation and therefore to engage in the plea bargaining process at numerous crucial times in my own case as well as in the government's investigation of other targets with whom I was in an exceptional position to provide proactive assistance with. As a result of Mr. Goldman's unrealistic and unreasonable demands of the AUSA which would have forced the AUSA to go against the standard protocol for SDNY had he chosen to comply, the AUSA was forced, in doing his job, to increase the scope of my case and therefore my guidelines in a desperate attempt to exhibit to me, who he felt to be uncooperative, the severity of circumstances. Furthermore, Mr. Goldman in his defiance and lacking even a basic knowledge of the standard operating procedures of SDNY failed to find basic form agreements such as the proffer agreement to be acceptable and believed that those should be altered specifically for my case, when in fact those same forms are used in almost all similar white collar cases within SDNY. Long after Mr. Goldman's departure from my case, the negative effects of his counsel continued to reverberate as the AUSA communicated to the probation officer of SDNY for my PSR that I made "last ditch efforts to cooperate" that "did not amount to successful investigations of additional targets." (see Exhibit N). The arguments of the AUSA regarding the delay in my cooperation in fact continued until the time of my sentencing which can be seen in a letter to The Honorable Lewis A. Kaplan on February 6, 2017 where the AUSA states "The Government found Spoutz candid in his proffer, believes that he made sincere, if ultimately fruitless, efforts to cooperate following his arrest, and agrees that the Court may

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consider Spoutz's efforts as a kind of contrition (albeit belated) when calculating the sentence...Spoutz's cooperation came long after he was initially approached by law enforcement, prior to his public arrest in this case." (see Exhibit O)

When I retained Robert E. Goldman, I relied upon his own representations regarding his substantial career experience with the United States Department of Justice (see Exhibit M), to act in my best interest in order to facilitate communications, negotiations and agreements that would be mutually beneficial to both the government and myself, which Mr. Goldman failed to do.

# Exhibit A

E-A

From: Robert Goldman reg@bobgoldmanlaw.com
Subject: FW: Eric Spoutz
Date: Nov 28, 2014, 1:16:24 PM
To: Eric I. Hornak Spoutz ericspoutz@gmail.com

FYI below

**From:** Robert Goldman [mailto:reg@bobgoldmanlaw.com]
**Sent:** Friday, November 28, 2014 1:15 PM
**To:** 'Christopher.mckeogh@ic.fbi.gov'
**Subject:** Eric Spoutz

Chris, I just left you a phone message. Mr. Spoutz has asked that I assist him in working with your office regarding the matter in which you have made inquiries. Could you or Agent Savona give me a call at my cell number below. If there is an AUSA involved in the matter, let me know please so I can contact him/her. Appreciate it and look forward to speaking with you.

In the meantime, please direct all inquiries to Mr. Spoutz through me so that I may be of assistance.
Bob

Robert E. Goldman, Esq.
P.O. Box 239
Fountainville, PA 18923
(267) 261 5282
(f) 215 348 8046

"Aggressive fighting for the right is the noblest sport the world affords"
- Theodore Roosevelt

Exhibit

B

E-B

From: Robert Goldman reg@bobgoldmanlaw.com
Subject: RE: Monday meeting
Date: Dec 1, 2014, 6:39:34 AM
To: Eric I. Hornak Spoutz ericspoutz@gmail.com

Will do

**From:** Eric I. Hornak Spoutz [mailto:ericspoutz@gmail.com]
**Sent:** Sunday, November 30, 2014 7:46 PM
**To:** Robert Goldman
**Subject:** Monday meeting

Bob-

Please call me as soon a you speak with the AUSA tomorrow morning. I'll be anxiously waiting.

Best-
Eric

--
Gallery 928

Eric I. Hornak Spoutz,
Advisory Curator.

Address:
Westin Cape Coral Resort at Marina Village,
5991 Silver King Boulevard,
Suite 108,
Cape Coral, Florida 33914 USA

Mobile: (561) 502-4789
ericspoutz@gmail.com

Websites:
www.gallery928.com
www.ericspoutz.com
www.franz-kline.com
www.ianhornak.com

Current Exhibition(s):

Exhibit

C

E-C

From: Eric I. Hornak Spoutz ericspoutz@gmail.com
Subject: Updates/meeting/fed assistance
Date: Dec 13, 2014, 9:19:01 AM
To: Robert Goldman reg@bobgoldmanlaw.com

Hello Bob-

I'm trying to figure out what the next step is. I would like to be proactive about this in order to reduce or eliminate damage. What is the next step? I would like to meet with you in person asap.

Additionally, there are two forgery rings that I am willing to expose to the government under the right circumstances. One is a multi million dollar (possibly deca million dollar) national collectables forgery ring. The other is a much smaller modern masters print forgery ring. The larger of the two would be a gigantic score for the Feds and I would be willing to place myself in harms way, under the right circumstances, to help them to secure an indictment.

Best-
Eric

--

Hornak Spoutz Holdings, LLC.

Eric I. Hornak Spoutz,
Advisory Curator.

Address:
5781 Cape Harbour Drive,
Suite 1306,
Cape Coral, Florida 33914 USA
(Mailing Address Only)

Mobile: (561) 502-4789
ericspoutz@gmail.com

# Exhibit

# D

E-D

From: Eric I. Hornak Spoutz ericspoutz@gmail.com
Subject: Thoughts
Date: Jan 7, 2015, 9:36:27 PM
To: Robert Goldman reg@bobgoldmanlaw.com

Bob, something else that you may consider mentioning when you do have a meeting is that by bringing me into the press, that is going to potentially jeopardize my effectiveness to be able to go undercover to aid the Fed's in investigations. Right now, I'm a reputable dealer that everyone wants to work with. If there is negative press about me regarding anything with the Fed's or the Justice Department, I would think that the people that I'll be pursuing for the Fed's will be reluctant to deal with me for fear that I'll turn on them. On a more practical level, I would hate to be murdered or injured because they thought that I was trying to pull something, which again could be as a result of any press.

Additionally, I'm happy to use my credentials, which are exceptional, and my professional standing to go undercover in any other investigations that they would want to use me in. I've been in this business for 16 years and my family has been since 1948. I've dealt with both the greatest and the worst dealers in the world. I know how to approach every form of transaction and how to transform myself in approach from runner to gallerist, from street dealer to elitist. This could all be very beneficial to them.

Just some thoughts that I had in passing...

--

Hornak Spoutz Holdings, LLC.

Eric I. Hornak Spoutz,
Advisory Curator.

Address:
5781 Cape Harbour Drive,
Suite 1306,
Cape Coral, Florida 33914 USA
(Mailing Address Only)

# Exhibit

# E

From: Eric I. Hornak Spoutz ericspoutz@gmail.com
Subject: Monday meeting
Date: Feb 1, 2015, 4:03:04 PM
To: Robert Goldman reg@bobgoldmanlaw.com

Hello Bob:

We have returned from our trip. Are you still meeting with the prosecutor on Monday? After thinking about it, I have a couple more cases in addition to the two that I've previously mentioned to you that I can assist the Feds with. One is with a northeast dealer who is handling false Picassos and Chagalls. There are probably others that I can think of also. In other words, I have a large network of people, both positive and negative, that I've bumped into from time to time over the last 16 years. It should be noted that I've never had any affiliation with any of the subjects that I'm mentioning. It has only been through collectors who have brought artwork to me from those sources only to have my academic connections declare the work to be false that I became aware of them. During the research process, I spoke with each dealer and their bogus "experts" and had them offer to do future business with me if I was so inclined (I've never accepted).

Hopefully the Feds will find this to be of tremendous value as I know how to pursue deals with the subjects to benefit potential investigations if they are interested.

Best-
Eric

--
Hornak Spoutz Holdings, LLC.

Eric I. Hornak Spoutz,
Advisory Curator.

Address:
5781 Cape Harbour Drive,

Exhibit

F

E-F

From: Eric I. Hornak Spoutz ericspoutz@gmail.com
Subject: Additional cases
Date: Feb 1, 2015, 10:50:26 PM
To: Robert Goldman reg@bobgoldmanlaw.com

Bob, in addition to the cases that I detailed, I may be able to assist them with apprehending other dealers handing forged artwork. I will have to search my memory and my files to bring forth others if necessary. I suppose you can use the first four cases as a feeder and we can go from there.

Best-
Eric

--
Hornak Spoutz Holdings, LLC.

Eric I. Hornak Spoutz,
Advisory Curator.

Address:
5781 Cape Harbour Drive,
Suite 1306,
Cape Coral, Florida 33914 USA
(Mailing Address Only)

Mobile: (561) 502-4789
ericspoutz@gmail.com

Websites:
www.ericspoutz.com
www.franz-kline.com
www.ianhornak.com

Current Exhibition(s):

"Chagall, Dali & Miro: A Selection of Modern Masters," October 30, 2014 -

# Exhibits

# G, H, I

From: Eric Hornak Spoutz ericspoutz@gmail.com
Subject: Re: Force
Date: Feb 4, 2015, 8:19:30 AM
To: Robert Goldman reg@bobgoldmanlaw.com

Thanks, Bob. Nonetheless, could it be potentially beneficial to aid the Feds with Force and would what I have to offer be of interest to them?

Best-
Eric

Sent from my iPhone

> On Feb 4, 2015, at 8:01 AM, Robert Goldman <reg@bobgoldmanlaw.com> wrote:
>
> Eric, unfortunately if you are charged there is no way of assuring you that your name would stay out of the press. Indictments and all court filings are public record as are all court proceedings. Bob
>
> -----Original Message-----
> From: Eric Hornak Spoutz [mailto:ericspoutz@gmail.com]
> Sent: Wednesday, February 04, 2015 12:19 AM
> To: Robert Goldman
> Subject: Force
>
> Attorney Client Privilege:
>
> Bob:
>
> I was thinking about what we discussed earlier regarding my knowledge of cases. Perhaps I've been overlooking the largest of them all which is my involvement with Bill Force. Although I sold less than 10 pieces to him, I developed a very close relationship with him that continues to this day (now, primarily in the form of him calling me). We have had thousands of

E-G

hours of phone conversations over the last few years and I have intimate knowledge of his business circle. Although I never agreed to sell anything from him or any of his sources, that has never stopped him from continuing to offer many pieces attributed to many artists to me. I have hundreds of emails from him with such offerings.

Also, I am probably one of the few people that he still trusts and that he speaks openly to at great length. I know that he's trying to sell more artwork to fund his legal representation and he would gladly use me as the broker. I am one of the few people who is still in a position to be able to have very in depth, open conversations with him about subjects ranging from
John Re, etc. which could be recorded.

Due to my very, very close relationship with him, I feel that I could be the Fed's greatest asset in gathering information at this point. Especially because he's very suspect of everyone else around him.

It should be noted that while I know that he has handled some of the most dangerous artwork of the 21st century, I don't feel that he has intentionally done anything wrong. He is in my opinion a delusional man who is incredibly naive. He's on a very weird spiritual journey with the artwork that he feels he "discovers" and seems to have a heart of gold. I can say that I've dealt with just about every personality type in this field, although Bill is unlike anyone I've ever met.

I will only do this if it keeps my name out of the press with my own case. Please let me know your thoughts.

Best-
Eric

# Exhibit

# J

E-5

From: "Robert Goldman" <reg@bobgoldmanlaw.com>
Date: April 7, 2015 at 10:51:30 AM EDT
To: "'Eric Hornak Spoutz'" <ericspoutz@gmail.com>
Subject: RE: updates

Eric, My take on it is that they believe you were involved in a wide ranging fraud but do not have the proof they need right now. Therefore, they are working to attempt to build a case against you. You will remember that they would not disclose what evidence they had against you and their view of the case was way off base. Given that decision making on their part, it was premature and harmful to your position to merely go in blindfolded and talk with them.

It is their common practice to circle back to us once they believe they have a case. Even if they were to indict you without advanced notice, you always have the option then of working out a deal and still getting the reduction for acceptance of responsibility. Bob

# Exhibit

# K

E-K

From: Robert Goldman reg@bobgoldmanlaw.com
Subject: RE: Attorney/Client Privilege
Date: Feb 16, 2016, 1:48:36 PM
To: Eric I. Spoutz ericspoutz@gmail.com

ATTORNEY CLIENT PRIVILEGED

1. Adams states that he never stated that he would not charge you in exchange for cooperation. He said that if you cooperate, he could delay indictment for a period of 30 days and that if it results in a cooperation plea agreement, they would file an Information against you and you would plead to that. [FYI, an Information has the identical effect as an Indictment. An Indictment is returned by a grand jury at the request of the prosecutor. An Information is an identical document as an indictment but is signed by the US Attorney since the defendant waives his right to Indictment.]

This is what Adams was willing to tell me re the subject matter he wants you to talk about:

Alessi bought DeKoonings and a Kline and resold
He asked ES for backdated bill of sale that remedied a problem Alessi was having

Force & Burns dealt with John Re and Leo Mangin.
Dealt with a lot of fake pieces including a Pollack and used fake provenances
He wants to know what you know about them and your telephone conversations with them
Dealer 1 in the Complaint is Burns
Are Force & Burns involved in criminality or are they victims of others, including possible ES

The Smithsonian matter deals w ES (Goodman) providing false information to Museum in order to get them to accept a contribution of an item by ES. ES did this in order to then use as a marketing tool the fact that the Smithsonian has materials from ES in its collection

He presently estimates the direct loss attributed to you as between 200,000 and 400,000. This before any resale by purchaser from you.

Digest all of this and we will talk.

---

**From:** Eric I. Spoutz [mailto:ericspoutz@gmail.com]
**Sent:** Tuesday, February 16, 2016 10:12 AM
**To:** Robert Goldman
**Subject:** Attorney/Client Privilege

ATTORNEY/CLIENT PRIVILEGE

# Exhibit L

E-L

From: Robert Goldman reg@bobgoldmanlaw.com
Subject: attorney client privileged
Date: Feb 16, 2016, 2:20:20 PM
To: Eric I. Spoutz (ericspoutz@gmail.com) ericspoutz@gmail.com

Eric,
Focus specifically on what I have underlined in the attached.

W

spoutz 201...ment.docx
40.6 KB

E-L

# PROFFER AGREEMENT

With respect to the meeting of ___________ ("Client") and his attorney, _________, Esq., with Assistant United States Attorney _______________ to be held at the Office of the United States Attorney for the Southern District of New York on [Meeting Date] ("the meeting"), the following understandings exist:

(1) **THIS IS NOT A COOPERATION AGREEMENT**. The Client has agreed to provide the Government with information, and to respond to questions, so that the Government may evaluate Client's information and responses in making prosecutive decisions. By receiving Client's proffer, the Government does not agree to make a motion on the Client's behalf or to enter into a cooperation agreement, plea agreement, immunity or non-prosecution agreement. The Government makes no representation about the likelihood that any such agreement will be reached in connection with this proffer.

(2) In any prosecution brought against Client by this Office, except as provided below the Government will not offer in evidence on its case-in-chief, or in connection with any sentencing proceeding for the purpose of determining an appropriate sentence, any statements made by Client at the meeting, except (a) in a prosecution for false statements, obstruction of justice or perjury with respect to any acts committed or statements made during or after the meeting or testimony given after the meeting; or (b) if, at any time following the meeting, Client becomes a fugitive from justice.

(3) Notwithstanding item (2) above: (a) **the Government may use information derived directly or indirectly from the meeting for the purpose of obtaining leads to other evidence, which evidence may be used in any prosecution of Client by the Government**; (b) **in any prosecution brought against Client, the Government may use statements made by Client at the meeting and all evidence obtained directly or indirectly therefrom for the purpose of cross-examination should Client testify**; (c) **the Government may also use statements made by Client at the meeting to rebut any evidence or arguments offered by or on behalf of Client** (including arguments made or issues raised sua sponte by the District Court) **at any stage of the criminal prosecution (including bail, all phases of trial, and sentencing)** in any prosecution brought against Client; and (d) the Government may use information derived directly or indirectly from the meeting for purposes of evaluating whether Client meets the criteria specified in the Department of Justice's August 12, 2013, policy on charging mandatory minimum sentences and recidivist enhancements in certain drug cases.

(4) **The Client understands and agrees that in the event the Client seeks to qualify for a reduction in sentence under Title 18, United States Code, Section 3553(f) or United States Sentencing Guidelines, Sections 2D1.1(b)(16) or 5C1.2, the Office may offer in evidence, in connection with the sentencing, statements made by the Client at the meeting and all evidence obtained directly or indirectly therefrom.**

(5) To the extent that the Government is entitled under this Agreement to offer in evidence any statements made by Client or leads obtained therefrom, Client shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

(6) **If this Office receives a request from another prosecutor's office for access to information obtained pursuant to this Proffer Agreement, this Office may furnish such information** but will do so only on the condition that the requesting office honor the provisions of this Agreement.

(7) It is further understood that this Agreement is limited to the statements made by Client at the meeting and does not apply to any oral, written or recorded statements made by Client at any other time. No understandings, promises, agreements and/or conditions have been entered into with respect to the meeting other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

(8) The understandings set forth in paragraphs 1 through 7 above extend to the continuation of this meeting on the dates that appear below.

(9) Client and Attorney acknowledge that they have fully discussed and understand every paragraph and clause in this Agreement and the consequences thereof.

Dated: New York, New York

PREET BHARARA
United States Attorney for the
Southern District of New York

by: ______________________________
Assistant United States Attorney

______________________________
Client

______________________________
Attorney for Client

______________________________
Witness

**Dates of Continuation**

**Initials of counsel, Client, AUSA, witness**

# Exhibit

# M

E-M

INTERNET ARCHIVE
WaybackMachine
http://www.bobgoldmanlaw.com/html/background.htm Go
20 captures
1 Aug 12 - 3 Aug 16
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2015

# LAW OFFICE OF
# ROBERT E. GOLDMAN LLC

Robert E. Goldman brings to his clients his extensive background in criminal law, both as a prosecutor and defense attorney. He also handles civil rights matters where law enforcement oversteps the proper boundaries of the law. In addition, he practices art, antiquities, and collections law, representing individuals, institutions, and countries in matters relating to art and cultural property. His client base is nationwide.

BBob has extensive background in courtroom litigation, with 38 years of trial experience. Bob has previously served as a state and federal prosecutor for 28 years, 19 years of which were with the United States Department of Justice. He has broad experience in the widest range of criminal cases, including white-collar crime, violent crime, allegations of fraud, political corruption, narcotics cases, and art and museum theft.

As a former prosecutor, he knows and understands how criminal cases are built and how to assist the client navigate through criminal investigations, including grand jury investigations. Should the unfortunate result and you find yourself charged with a criminal offense, you need an attorney who understands how to, and will, fight on your behalf."

He is also an Immigration Law trial attorney who provides representation to corporations and management in connection with investigations by ICE (Immigration and Customs Enforcement). In a coordinated effort with other immigration attorneys, he assists companies to avoid investigation by examining their compliance programs and installing changes to their in-place system. Where an ICE investigation is initiated, he brings a prompt hands on approach to dealing with the government's efforts.

As a federal prosecutor, Bob served as Special Trial Attorney with the U.S. Department of Justice as the national prosecutor with the newly created FBI National Art Crime Team. This Unit was formed to prosecute international art theft, antiquities smuggling, and fraud in the art and collecting industry. With the FBI, Bob was involved in the recovery of more than $150 million worth of stolen art and cultural property. Now as a private practitioner, Bob applies his background and training to assist private individuals, companies, institutions and countries in matters dealing with potential art litigation.

As a trial attorney with great familiarity with how government investigations are conducted, he assists his clients navigate through investigations with the goal of convincing prosecutors to take no action and bring an end to the investigation. Where a prosecution follows an investigation, his long term experience in the courtroom and in handling complex litigation is directed towards assisting his clients defend against the pending allegations.

BACKGROUND
IN THE NEWS
CONTACT
HOME

E-M

**Honors and Awards**

Smithsonian Burke Award for excellence in cultural property protection (2006)

Selected as a "Named a "Pennsylvania Super Lawyer" by *Law & Politics* and *Philadelphia* magazines in the area of Criminal Defense: White Collar. (2006 through 2009)

* Department of Justice Director's Award for Superior Performance as an Assistant U.S. Attorney, for his investigation and prosecution of museum and art theft cases (2001)

Department of Justice Director's Award for Superior Performance as an Assistant U.S. Attorney, for heading a multi-agency investigation and prosecution of U.S. citizens and South African state-owned corporations involved in arms smuggling of high-tech munitions (1998)

Medal and commendation from the Government of the Republic of Peru, for the recovery of a 2,000-year-old royal artifact stolen from the Tombs of Sipan and smuggled from Peru into the U.S. (1998)

Exhibit

N

## SENTENCING RECOMMENDATION

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF NEW YORK**
**UNITED STATES V. ERIC IAN HORNAK SPOUTZ, DKT. 0208 1:16CR00392-001**

| | |
|---|---|
| **TOTAL OFFENSE LEVEL** | **20** |
| **CRIMINAL HISTORY CATEGORY** | **I** |

| | **Statutory Provisions** | **Guideline Provisions** | **Recommended Sentence** |
|---|---|---|---|
| **CUSTODY:** | Ct. 1: 0 years-20 years | 33 months-41 months | 33 months |
| **SUPERVISED RELEASE:** | Ct. 1: 0 years-3 years | Ct. 1: 1 year-3 years | 3 years |
| **PROBATION:** | 1 year-5 years | Ineligible | Not recommended |
| **FINE:** | Ct. 1: $250,000 | $7,500-$75,000 | Not recommended |
| **RESTITUTION:** | $154,100 | $154,100 | $154,100 |
| **FORFEITURE:** | $1,450,000 | $1,450,000 | $1,450,000 |
| **SPECIAL ASSESSMENT:** | Ct. 1: $100 | Ct. 1: $100 | Ct. 1: $100 |

**Justification:**

The defendant stands before the Court having pled guilty to one count of Wire Fraud. This represents the first known criminal conviction for this 33-year-old defendant. In the instant offense, the defendant, using various aliases, sold counterfeit works of arts by renowned artists. The offense spanned for an approximate a nine-year period causing about to $1.45 million in loss (including intended loss) to the victims. A restitution of figure of $154,100 has been tabulated. The defendant's advisory guidelines range is 33 to 41 months.

The defendant had a difficult upbringing. His father abused alcohol and drugs. In addition, he physically and emotionally abused the defendant's mother. Spoutz described his mother as the "poster child for depression." His parents divorced when he was about nine years of age. When he was about 19 years of age, Spoutz lost an uncle and a grandfather; both individuals were very dear to him. This appears to have been a very difficult time in his life. Spoutz married in 2012, although following his arrest in the instant, he separated from his wife for a period of time. They are currently in the process of reconciling. They do not have any children. Since his arrest in February 2016, he has been unemployed. He is supported by his mother. His work history has always been in the fine arts industry.

Spoutz reported that between the ages of 18 and 30, he was under the care of a mental health professional. Reportedly, he was diagnosed with Bipolar Disorder and was prescribed medication throughout his treatment. In 2013, he appears to have abruptly stopped treatment and taking medication. He said that he regretted taking the medication over the years and currently feels the best that he has felt in years.

The defendant's actions in the instant offense were particularly callous. While he held himself out as someone who promoted the arts, he repeatedly tainted the credibility of the art industry through his fraudulent sales. While he did not discuss his involvement in the instant offense, he alluded to the fact that his fraudulent sales coincided with difficult financial times. We spoke with the Government who indicated that following his arrest in the instant offense, the defendant attempted to make some consensual telephone calls. But these calls did not amount to any successful investigations of additional targets. While his last ditch efforts to cooperate could be deemed commendable, we believe a guidelines sentence is appropriate in this case. The actual loss in this case of $1.45 million is difficult to overlook. After taking into account the nature and circumstances of the offense, as well as the history and characteristics of the defendant, we recommend a sentence at the low end of the guidelines range. We believe this sentence is sufficient but not greater than necessary to comply with the purposes set forth in 18 U.S.C. §3553(a)(2). A $100 special assessment is mandatory, as is $154,100 in restitution. We recommend special conditions of financial disclosure and financial restrictions to ensure enforcement of any order of restitution or fine. Based on his extensive past mental health treatment, as a special condition of supervised release, we recommend that he participate in mental health treatment.

Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, for offenses committed after September 13, 1994, the court shall require that all offenders on probation, parole, or supervised release submit to one drug test within fifteen days of commencement of probation, parole or supervised release and at least two drug tests thereafter for use of a controlled substance, unless ameliorated or suspended by the court due to its determination that the defendant poses a low risk of future substance abuse as provided in 18 USC 3563 (a) (5) / 3583 (d).

# Exhibit

# O

E-D

U.S. Department of Justice

*United States Attorney*
*Southern District of New York*

*The Silvio J. Mollo Building*
*One Saint Andrew's Plaza*
*New York, New York 10007*

February 6, 2017

**BY EMAIL AND SUBMITTED UNDER SEAL**
Hon. Lewis A. Kaplan
United States District Judge
Southern District of New York
Daniel P. Moynihan Courthouse
500 Pearl Street
New York, New York 10007

**Re: *United States* v. *Eric Ian Hornak Spoutz*, 16 Cr. 392 (LAK)**

Dear Judge Kaplan:

The Government writes separately regarding the upcoming sentencing of Eric Ian Hornak Spoutz, and with a request that this letter be maintained under seal in light of the sensitive nature of its contents.

Following Spoutz's arrest in this case on February 10, 2016, Spoutz, through his attorney, expressed an interest in cooperating with the Government in connection with other, ongoing frauds about which Spoutz professed to have knowledge. On April 5, 2016, Spoutz attended a proffer session with the Government, during which Spoutz discussed his own crime and potential targets for further investigation. Thereafter, one of those individuals became a subject of investigation regarding then on-going attempts to sell forged Picasso paintings using many of the same methods that Spoutz had used in his own criminal endeavors. Spoutz agreed to make recorded telephone calls and to provide the Government with copies of correspondence between Spoutz and this target. After several such communications, the Government terminated its efforts to use Spoutz proactively in an investigation of that target, and determined that Spoutz's information was unlikely to result in any investigatory benefit to the Government. At that point, the Government informed Spoutz, through his counsel, that the Government would no longer be proffering Spoutz and that the Government was prepared to move forward toward sentencing in this case.

The Government found Spoutz candid in his proffer, believes that he made sincere, if ultimately fruitless, efforts to cooperate following his arrest, and agrees that the Court may consider Spoutz's efforts as a kind of contrition (albeit belated) when calculating a sentence under the § 3553(a) sentencing factors. Nevertheless, Spoutz's efforts do not change the Government's view that a Guidelines sentence is appropriate in this case. Spoutz's cooperation came long after he was initially approached by law enforcement, prior to his public arrest in this case. His cooperation may well have been more useful had he not initially lied to law enforcement when first confronted with his crimes in November of 2014.

In light of the sensitive nature of this letter, the Government respectfully requests that this letter be maintained under seal.

Respectfully submitted,

PREET BHARARA
United States Attorney

By: /s/ Andrew C. Adams
Andrew C. Adams
Assistant United States Attorney
(212) 637-2340

# Ground

# Two

Ground Two

Throughout the course of the federal investigation into my fraudulent business dealings which lasted for nearly 1 1/2 years and the subsequent case resulting from formal charges and a public arrest on February 3, 2016, my initial attorney, Robert E. Goldman, hindered both my efforts and that of the government to enter into a proffer, cooperation and plea bargaining process (see Exhibit P). When finally, without prior cooperation, a plea bargain was presented by the AUSA, Mr. Goldman forwarded it in its entirety to me by email and advised me to continue to decline cooperation with the government as well as advising me to decline the plea bargain with the advice that my case should proceed to trial, despite my having expressed the desire to plead guilty to Mr. Goldman. When I expressed interest in entering into a plea bargain with the government and asked Mr. Goldman whether he could negotiate more favorable terms to the plea bargain that the government had sent, he responded "No. It is what it is." Shortly thereafter Mr. Goldman was relived from my case and Jean D. Barrett was appointed as my counsel. Upon the appointment of Ms. Barrett, I immediately expressed my desire to cooperate with the government, which she said she almost always recommends to her clients and she thereby opened communications with the AUSA to schedule the requisite proffer. It was also at that time that she presented the plea bargain, verbatim, that Mr. Goldman had presented to me weeks earlier from the government. When I asked her if she could negotiate the plea bargain, she said that she could not. She never attempted to, therefore, I ultimately signed the exact plea, which had never been negotiated in the least, that had been sent by the AUSA to my initial attorney, Robert E. Goldman. Based upon the aforementioned facts and sequence of events, I allege ineffective assistance of counsel from Robert E. Goldman and Jean D. Barrett for their both failing to make even the most basic attempts at negotiating the plea bargain from the AUSA despite my repeated requests.

Exhibit

P

E-P

From: Eric I. Spoutz ericspoutz@gmail.com
Subject: Agreement between prosecutor & attorney
Date: Mar 29, 2016, 10:34:14 AM
To: Jean Barrett jeanbarrett@ruhnkeandbarrett.com

Dear Jean:

The agreement between my attorney and the prosecutor, as I understood it, was that with my cooperation on their requested list of subjects and a guilty plea, the government would only trace the case back to 2010 and confine the loss amount to $200,000 - $400,000.

The next day after court where that offer was made, I sent my attorney an email instructing him to contact the prosecutor to offer my full cooperation. My attorney, however, did not follow my instructions stating to me he did not want to appear "weak" in the eyes of the government and that he wanted my case to go to indictment, discovery and hopefully trial. He went against my wishes.

I would like to see if we can get the government to honor their original offer.

Best-
Eric

# UNITED STATES DISTRICT COURT
# SOUTHERN DISTRICT OF NEW YORK

USA

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

Hornak Sparz, Eric Ian

(List the full name(s) of the defendant(s)/respondent(s).)

_____ CV __________

**Motion for Permission for Electronic Case Filing**

I respectfully ask the Court for permission to participate in electronic case filing ("e-filing") in this case. I affirm under penalty of perjury that:

1. I have reviewed the Court's Electronic Case Filing Rules & Instructions, available at http://nysd.uscourts.gov/ecf/ECF%20Rules%20Revision%20031714.pdf, and agree to abide by them.

2. I completed the Court's CM/ECF introduction course[1] on __________ .

3. I understand that once I register for e-filing, I will receive notices and documents only by e-mail in this case and not by regular mail.

4. I understand that if I am granted permission to participate in e-filing, I must file my documents electronically and I may not submit documents to the Pro Se Intake Unit for scanning and docketing.

5. I understand how to convert a document to PDF-A format.

6. I have regular access to the technical requirements necessary to e-file successfully:

   ☒ a computer with internet access and a word processor

   type of computer I will be using: Gate Way

   type of word processor I will be using: Word

[1] You may register for the course on the Court's website: http://nysd.uscourts.gov/ecf_training.php.

☒ an e-mail account (on a daily basis) to receive notifications from the Court and notices from the e-filing system

☒ a scanner to convert documents that are only in paper format into electronic files

scanning equipment I will be using: Fast Scanner Pro

☒ a PDF reader and a PDF writer to convert word-processing documents into PDF format, the only electronic format in which documents can be e-filed

version of Adobe Acrobat or other PDF reader and writer that I will be using:
Adobe Acrobat App.

☒ a printer or copier to create required paper copies such as chambers copies.

7. I understand that I must regularly review the docket sheet of the case so that I do not miss a filing.

8. I understand that if my use of the ECF system is unsatisfactory, my e-filing privileges may be revoked, and I will be required to file documents in paper.

2-22-17
Dated

[signature]
Signature

Spoutz Eric Ian
Name (Last, First, MI)

18563 Campo Dr. | Clinton Twp. | MI | 48038
Address | City | State | Zip Code

323-379-7968
Telephone Number

ericspoutz@gmail.com
E-mail Address

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